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Before the
FEDERAL COMMUNICATIONS COMMISSION
May 21 10 23 AM '92
Washington, D.C. 20554

FCC 92M-583
02847

In re Applications DISPATCHED BY) MM DOCKET NO. 92-107
BIBLE BROADCASTING NETWORK, INC.) File No. BPED-900816MA
Channel 209A)
Fort Smith, Arkansas)
NATIONAL CHRISTIAN NETWORK, INC.) File No. BPED-900823MA
Channel 207C2)
Fayetteville, Arkansas)
For Construction Permit for a New)
Noncommercial Educational FM Station)

PREHEARING ORDER

Issued: May 19, 1992 ; Released: May 20, 1992

1. We will hold the prehearing conference on September 11, 1992, and the hearing will begin on September 29, 1992. ¹ Both will begin at 8:30 a.m. in the Commission's offices in Washington, D.C. The parties will exchange their direct case exhibits at the September 11th prehearing.

2. Appearances and Publication. On or before June 3, 1992, each applicant must show that they've met 47 CFR 1.221(c)'s requirements. On or before June 15, 1992, each must demonstrate that they have met 47 CFR 73.3594(g)'s publication requirements. See DA 92-558 released May 14, 1992 at paras. 14 - 15.

3. Clarification of Issues. The Chief, Audio Services Division has designated a 47 USC 307(b) issue for hearing along with a non-commercial areas and populations issue. See DA 92-558 supra, Issues 2(a) and (c). On areas and populations, each applicant's engineer should immediately consult with the Bureau's engineer and iron out the ground rules for their evidentiary submissions in this case. Then those engineers should get started on their exhibit.

4. The parties should consider a joint areas and populations exhibit if only for reasons of economy. If you can't agree on a joint coverage exhibit, each applicant must not only portray their own areas and population

¹ The Trial Judge has reserved courtroom space for three days, September 29, 1992 through October 1, 1992.

but your opponents as well. That will be a substantial added expense. It could also give rise to evidentiary conflicts. But both of you are alerted now. If you take the joint exhibit route you will be bound by that agreed-upon showing.

5. All preliminary engineering will be exchanged on or before July 23, 1992, and the final engineering will be exchanged at the September 11, 1992 prehearing. Any 307(b) non-engineering demographics will also be exchanged at the September 11 prehearing. All population data should be based on the latest U.S. Bureau of the Census figures. In that way we'll have comparable data.

6. The Chief has also set down a contingent comparative issue for hearing. See DA 92-558 supra, at para. 5 and Issue 3. So each applicant will be expected to prepare and exchange exhibits that (1) detail their overall non-commercial operation and objectives; (2) demonstrate the extent each of their proposed operations will be integrated into those overall operations and objectives; and (3) describe any other factors which show they'll provide a superior FM non-commercial broadcast service.

7. Finally, the Chief has designated a contingent basic qualifying issue against both Bible Broadcasting Network, Inc. and National Christian Network. See DA 92-558 supra, paras. 3 and 11 and Issue 1. So each applicant must file its EA amendment on or before June 15, 1992. And if they have not satisfied the Mass Media Bureau by the time of the September 11, 1992 prehearing conference, they'll submit their environmental direct case evidence on that day.

8. Both counsel should be prepared to discuss any questions about clarification of existing issues.

9. Perfecting Amendments. The Chief has called on both applicants to amend their applications on or before June 15, 1992. See DA 92-558, paras. 2, 3, 10 and 11.² All amendments must be accompanied by a Petition for Leave to Amend. See The New Continental Broadcasting Company, FCC 80M-102, released January 3, 1980 at Footnote 1.

10. Bible Broadcasting Network, Inc. is reminded that they cannot obtain any comparative advantage from the late-filed amendments they filed on July 22, August 26, October 9, November 7, December 20, 1992, and January 17 and April 7, 1992. See DA 92-558 supra, at paras 7 and 12. In addition, they will be charged with any comparative deterioration resulting from such amendments. See WTAR Radio-TV Corporation et. al., 48 FCC 2d 1147.

2 Both applicants are reminded that they must serve copies of their amendments pursuant to para. 13 of the Hearing Designation Order.

11. Discovery. The use of discovery is discretionary. Discovery must be initiated on or before June 15, 1992 and completed on or before August 13, 1992. No 47 CFR 1.315 and 1.323 written interrogatories will be employed. Bible Broadcasting Network, Inc.'s principals will be deposed in Fort Smith, Arkansas, and National Christian Network, Inc.'s in Fayetteville, Arkansas unless otherwise agreed-upon. Discovery is not to be used as a vehicle for obtaining data on which to base motions to enlarge issues. If issues are added later on, provisions for any needed discovery on those enlarged issues will be made in the enlargement order.

12. The parties will hold a discovery conference on June 8, 1992, at 10:00 a.m. They will meet in Bible Broadcasting Network, Inc. counsel's office unless otherwise agreed upon. There they will set up an agreed-upon deposition schedule; they should also agree on a joint motion for production of documents and how that joint motion will be implemented. ³

13. Any Motion for an In Camera Inspection must be filed on or before June 15, 1992, and must comply with the five-step procedure in Patterson Communications Associates, 41 RR 2d 640 (1977) and 41 RR 2d 1027 (1977).

14. Settlement. The Chief, Audio Services has designated a share-time issue for hearing. See DA 92-558 supra. at para. 4, and Issue 2. So each applicant, if they so desire, can submit evidence on any share-time arrangement they believe would result in the most effective use of the channel. However, such a share-time arrangement could also be used to arrive at a prehearing settlement.

15. The case could prove long and costly. Because of lawyers and engineering fees both applicants will lose. At best one of you will have squandered substantial amounts of time and money prosecuting this case. Invariably there is a direct relationship between the length of trial and the amount of costs involved. The general rule is the longer the trial, the greater the cost. So from your client's viewpoint this prospective litigation is a mistake. Being merely another form of warfare it should be avoided. So engage in settlement dialogue now. Don't wait to argue before the Commission three and a half years from today.

³ It's no defense to an otherwise legitimate discovery motion for the objecting party to claim that it intends to either file a Petition for Leave to Amend, or a Motion for Summary decision that will moot the discovery requests. Nor should an objecting party seek to defer a response to discovery on that ground.

16. To this end, a negotiating principal from each applicant along with their attorney (if they're not pro se) are directed to attend a disposition conference on August 20, 1992, at 2:00 p.m.⁴ This face-to-face conference will be held at a prearranged agreed-upon location. There the applicants should determine whether this case can be settled.

17. On or before August 27, the applicants should submit a Joint Settlement Memorandum to the Trial Judge outlining the results of the August 20th disposition conference. The memorandum should include, but not necessarily be limited to, answers to the following questions:

(a) Has this case been settled? If so, do the settlement terms pose any public interest questions?

(b) If the case hasn't been settled, were any offers made at the conference? If so, are they still open? For how long?

(c) If the case has been settled, how soon can the settlement package, i.e., the joint request and the accompanying papers be submitted for approval?

18. Marshalling and Exchanging Exhibits. It will contribute significantly to the disposition of this proceeding for the parties to submit and exchange their direct affirmative cases in writing. This will include the sworn written testimony and the exhibits to be offered in support of their direct cases. Such an exhibit exchange will take place at the September 11, 1992 Prehearing Conference.⁵

19. If either party intends to request that official notice be taken of any materials in the Commission's files, that material should be assembled in written form, properly identified by source, given a tentative exhibit number and exchanged on the date set.

20. Each party will assemble its exhibits in a binder. Each exhibit will bear a number, preferably by means of a tab on each document. Please number the exhibits serially starting with the number 1. Each exhibit will

⁴ The applicants needn't wait until August 20, 1992 to talk settlement. Nor should the mandatory face-to-face conference be the only effort at settlement. In brief, neither party should be afraid to initiate settlement efforts.

⁵ Before he exchanges his written exhibits, counsel would be wise to go over them and delete all unnecessary adjectives and comparative puffing. Let's save everybody time and money.

also contain the sponsoring witnesses' affidavit - if such an affidavit is required (see para. 19 supra). Use a prefix to indicate who is sponsoring the exhibits; e.g. Broadcasting Ex. 1; National Ex. 1.

21. Evidentiary Admission Session. We will hold an evidentiary admission session on September 16, 1992, at 8:30 a.m. There each applicant (in docket order) will formally identify and offer the direct case exhibits he exchanged on September 11, 1992. The Trial Judge will rule on any objections to those proffers. Immediately at the conclusion of the evidentiary admission session, each party will notify his opponents of those witnesses they need to cross-examine and the exhibits or areas to be covered by that cross-examination.

22. Extensions of Time. The case has been placed on the Trial Judge's docket, and courtroom space has been reserved. So we cannot afford the luxury of procedural slippage. Otherwise, other case assignments suffer. Thus, any requests for extensions of time must be made in writing and must be consent extensions. In addition, any extension request for more than four working days must be signed by the client. ⁶

23. The September 29 - October 1, 1992 hearing dates are firm dates. A thorough but speedy trial is contemplated. The hearing dates will not be extended merely because counsel have agreed to recommend a settlement. ⁷

FEDERAL COMMUNICATIONS COMMISSION


Walter C. Miller
Administrative Law Judge

6 "Captive extension requests" will not be entertained.

7 Daily hearing sessions will begin at 8:30 a.m. and end at 5:30 p.m. with an hour for lunch.